

00780

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-186360

DATE: DEC 9 1976

MATTER OF William A. Vischer - Overseas tour
renewal agreement travel

DIGEST: Employee's overseas tour renewal agreement travel was postponed because of Agriculture Department's workload requirements. He undertook renewal agreement travel after notification of transfer within the Department to conterminous United States. Employee is not liable for repayment of such travel expenses in view of travel postponement in interest of Government and specific provision in the executed renewal agreement that transfer in the interest of the Government will not be regarded as agreement violation. However, provision of renewal service agreement is inconsistent with 5 U.S.C. 5728 and agency's own regulations and should be revised.

This matter is before us on the request of May 12, 1976, from Ms. Orris C. Huet, an authorized certifying officer of the Department of Agriculture, for a decision regarding that Department's obligation to recover \$794.89 paid in connection with the renewal agreement travel of Mr. William A. Vischer.

Incident to completion of his initial 2 years of service in Juneau, Alaska, on August 18, 1973, Mr. Vischer entered into a renewal agreement for an additional 2-year tour of duty and requested leave for purposes of tour renewal agreement travel to begin August 20, 1973. Because of work load demands, Mr. Vischer's supervisor asked that the leave be delayed. By memorandum dated July 31, 1973, permission was given by the Regional Forester to delay the taking of leave no later than February 20, 1976. Mr. Vischer subsequently requested leave to begin December 8, 1973. That leave request having been approved, a Travel Authorization was issued on October 3, 1973, to cover the requested round-trip travel from Juneau to Hilo, Hawaii, limited to the expense of round-trip travel to the employee's actual residence in Corvallis, Oregon.

At an unspecified date Mr. Vischer had applied for a position in Eugene, Oregon, under the Forest Service's Merit Promotion Plan. On November 27, 1973, he was offered and accepted a lateral transfer with the Forest Service to Eugene, Oregon, to be effective January 26, 1976.

alw

B-186560

On December 8, 1975, after having accepted the transfer to Eugene, Mr. Vischer and his immediate family traveled to Hilo, Hawaii, for the period of leave. After returning to Juneau, he proceeded to effect the transfer to Eugene.

The certifying officer questions whether, under the circumstances described, Mr. Vischer is obligated to refund the \$794.39 paid by the Department of Agriculture for the renewal agreement travel between Juneau and Hilo. In this connection the certifying officer also asks whether the fact that an employee has a voluntary application on file with the same, or other Federal agencies, requesting assignment to a post of duty in the conterminous United States at the time or after, he signs a renewal agreement to stay at a post of duty outside the conterminous United States nullifies his intent at the same time he signs the renewal agreement. The last question is hypothetical and will be addressed only insofar as it applies to the facts of the case.

Section 5728 of Title 5 of the United States Code (1970) provides that an agency shall pay the round trip travel expenses of an employee and his immediate family from the post of duty outside the continental United States to his place of actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States and is returning to his actual place of residence to take leave before serving another tour of duty at a post of duty outside the continental United States under a new written agreement.

The Federal Travel Regulations (FTR) (FPMR 101-7), in paragraph 2-1.5h(1)(b) (May 1973) requires as a condition of eligibility for overseas tour renewal agreement travel that the employee enter into a new written agreement for another period of service at the same or another post of duty outside the conterminous United States (the 48 contiguous States and the District of Columbia). The liability of an employee for noncompliance with the renewal agreement is set forth at FTR para. 2-1.5h(4) which, insofar as pertinent, provides:

"(4) Liability of employee - noncompliance with new agreement. An employee who for reasons not beyond his control and not acceptable to the agency concerned fails to complete the period of service specified in a new service agreement is obligated for expenses and for allowances paid to him.

B-186360

"(a) Failure to complete initial year of service.
If the employee fails to complete 1 year of service under a new agreement, he is indebted to the Government for any amounts spent by the Government for (1) his transportation and per diem and transportation of his immediate family from the post of duty to his place of actual residence and from his place of actual residence to the last post of duty where he failed to complete a year of service. * * *

Accordingly, since Mr. Vischer did not complete one year at the same or another post of duty outside the conterminous United States, he would be responsible for repayment of renewal agreement travel and transportation expenses unless his failure to fulfill the terms of the renewal agreement was for reasons beyond his control and acceptable to the agency. In this connection, we do not believe that Mr. Vischer's application for a stateside position, either prior to or subsequent to his execution of the renewal agreement, nullifies the intent of the employee to serve outside the conterminous United States or the agreement itself. To conclude otherwise would unduly restrict employees in their participation in agency merit promotion plans and, thus, limit the effectiveness of the plans.

The primary question of whether Mr. Vischer is obligated to refund renewal agreement travel and transportation expenses is complicated because the terms of the renewal agreement that he executed are not in strict compliance with the requirements of 5 U.S.C. 5728, FTR para. 2-1.5h, or the Department of Agriculture's internal regulations. Rather than requiring that the employee remain for a specified period at a post of duty outside the conterminous United States, the agreement purports to require only that the employee remain in the service of the United States Government for a minimum of 2 years unless separated for reasons beyond his control or transferred in the interest of the Government. The agreement further provides:

"Should I resign for reasons not acceptable to the Government or am separated for cause within one year from my return to duty less the period of leave used, I hereby agree that I will refund any payments made to me or on my account by the United States for the above described travel and transportation * * *."

B-186360

Since the terms of the standard form agreement executed by Mr. Vischer are inconsistent with the regulations, we recommend the Department of Agriculture's revision of that form.

Under the particular circumstances of this case, however, we believe that the specific provision of the agreement to the effect that a transfer elsewhere in the interest of the Government will not be regarded as a violation of the agreement may be construed as valid insofar as it applies to transfers, such as Mr. Vischer's. Even though an employee may apply for a position potentially involving transfer from the overseas duty post, the selection process is such that an agency or department can properly determine whether or not a transfer ultimately effected in the Government's interest which results in the employee's departure from the overseas post is for reasons beyond his control which are acceptable to the agency concerned. We note in this connection that the Department of Defense has so determined by regulation. See paragraph C4008 of the Joint Travel Regulations, volume 2, entitled Violation Of Agreement, which specifically provides in part:

"* * * Transfers from one duty station to another while serving under a current agreement within the same military department or agency, even though a new agreement is signed in connection with such transfer, is not an agreement violation."

In view of the fact that the renewal agreement travel was postponed because of the work load and permission was given to delay it for 6 months, and in view of the language of the renewal agreement executed by Mr. Vischer indicating that a transfer in the interest of the Government will not be regarded as a breach thereof, the employee is not liable for repayment of amounts expended for travel and transportation to and from Hawaii for purposes of overseas renewal agreement travel.

R. F. KELLER

Deputy Comptroller General
of the United States